# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS BREEN, JR.		:			
1080 Richardson Avenue		:	CIVIL ACTION		
Bensalem, PA 19020		:			
		:	NO.:		
I	Plaintiff,	:			

BRENNER AEROSTRUCTURES, LLC d/b/a The Atlas Group

450-3 Winks Lane Bensalem, PA 19020 and

v.

ATLAS AEROSPACE, LLC d/b/a The Atlas Group 4425 W. May Street, Bldg. A Wichita, KS 67209

Defendants.

**JURY TRIAL DEMANDED** 

# **CIVIL ACTION COMPLAINT**

Francis Breen, Jr. (hereinafter "Plaintiff") by and through his undersigned counsel, hereby avers as follows:

## **INTRODUCTION**

1. Plaintiff has initiated this action to redress violations by Brenner Aerostructures, LLC, d/b/a The Atlas Group (hereinafter, "Brenner") and Atlas Aerospace, LLC, d/b/a The Atlas Group (hereinafter, "Atlas") (collectively, "Defendants") of the Age Discrimination in Employment Act ("ADEA" – 29 U.S.C. §§ 621 *et seq.*) and the Pennsylvania Human Relations Act ("PHRA"). As a direct consequence of Defendants' unlawful actions, Plaintiff seeks damages as set forth herein.

<sup>&</sup>lt;sup>1</sup> Plaintiff's claims under the PHRA are referenced herein for notice purposes. He is required to wait one (1) full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must, however, file his lawsuit in advance

# **JURISDICTION AND VENUE**

- 2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.
- 3. This Court may properly assert personal jurisdiction over Defendants because their contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.
- 4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendants are deemed to reside where they are subjected to personal jurisdiction, rendering Defendants residents of the Eastern District of Pennsylvania.
- 5. Plaintiff is proceeding herein (in part) under the ADEA after properly exhausting all administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety ("90") days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

### **PARTIES**

- 6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
  - 7. Plaintiff is an adult individual with an address as set forth in the caption.

of same because of the date of issuance of his federal right-to-sue-letter under the ADEA. Plaintiff's PHRA claims will mirror identically his federal claims under the ADEA.

- 8. Brenner is an is an aviation and aerospace company and operates a leading aerostructures manufacturer based in Bensalem, Pennsylvania.
- 9. Atlas is a global provider of complex aerospace products and services for commercial, business and defense clients.
- 10. Atlas, upon information and belief, is the parent company of several aerospace subsidiaries through the United States, including but not limited to Brenner, with headquarters at the address as set forth in the caption.
- 11. Atlas: acquired Brenner; lists Brenner as one of its affiliated companies on Atlas' website; and advertises career opportunities with Brenner on its website.
- 12. Because of their interrelation of operations, common ownership or management, centralized control of labor relations, common ownership or financial controls, and other factors, Defendants are sufficiently interrelated and integrated in their activities, labor relations, ownership and management that they may be treated as a single and/or joint employer for purposes of the instant action.
- 13. At all times relevant herein, Defendants acted by and through their agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the Defendants.

## FACTUAL BACKGROUND

- 14. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
  - 15. Plaintiff is a 61-year-old male, who was born in 1960.
- 16. Plaintiff was employed by Defendants for over five (5) years, from in or about July of 2015 until his unlawful termination (discussed further *infra*) on or about August 14, 2020.

- 17. Plaintiff was initially hired as a Senior Accountant. After Defendants recognized Plaintiff's hard work and dedication, he was promoted to Controller after one (1) year.
- 18. Throughout his employment with Defendants, Plaintiff was the sole person employed in the "accounting department" in Defendants' Bensalem, Pennsylvania location.
- 19. During his employment, Plaintiff was supervised locally by Michael Porter (President of Brenner) and Keith Kranzow (President and CFO of Atlas).
- 20. Plaintiff was a hard-working employee who performed his job very well throughout his years of employment. Prior to his termination, Plaintiff had not received any progressive warnings or discipline of any kind related to performance.<sup>2</sup>
- 21. Within less than a week prior to Plaintiff's termination from employment (discussed further *infra*), Plaintiff learned of a new hire within his department. This person (Joseph Wenson, who appeared to be aged in his late 30's/early 40's) was referred to as a "Senior Accountant," although he was substantially younger than Plaintiff.
- 22. Plaintiff was abruptly blind-sided with a baseless termination on or about August 14, 2020, at the direction of Kranzow, who is also substantially younger than Plaintiff.
- 23. Defendants' stated rationale for terminating Plaintiff after over five (5) years of employment a purported "restructuring" was completely pretextual and clearly a baseless excuse to terminate Plaintiff because of his advanced age.
- 24. There was in fact no restructuring, as evidenced by the fact that the headcount in Plaintiff's department *remained the same* as it did, prior to Plaintiff's termination.
- 25. Plaintiff was functionally replaced by someone younger than he was, who was performing Plaintiff's *same general role*, albeit under the pretext of a different job title. This individual did not have Plaintiff's level of experience, qualifications and seniority.

<sup>&</sup>lt;sup>2</sup> Plaintiff did receive a warning for alleged absences in 2019, which were related to cancer surgery and treatment.

- 26. Plaintiff even stated to Porter that if there were truly any changes to be made, Plaintiff would have taken a pay cut or a different title. Porter responded that Kranzow would not have consented to this.
- 27. Upon information and belief, as of recent times, there has also been a shift by Defendants to hiring younger personnel and older employees separating.
- 28. When Plaintiff was informed of his termination, he was presented with a severance agreement asking that he waive any claims that he has or may have against Defendants in exchange for monetary compensation. Upon information and belied, Defendants do not have a written policy regarding severance and typically do not offer severance packages.<sup>3</sup>
- 29. Plaintiff believes and therefore avers that he was terminated from his position with Defendants because of his advanced age.

## **COUNT I**

# Violation of the Age Discrimination in Employment Act ("ADEA") (Age Discrimination) -Against Both Defendants-

- 30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 31. While employed with Defendants, Plaintiff was subjected to discrimination based on his age by Defendants' management.

<sup>&</sup>lt;sup>3</sup> See e.g. Staffieri v. Northwestern Human Servs., 2013 U.S. Dist. LEXIS 72115 at \*\*14-15 (E.D. Pa. May 22, 2013) (an employer who offered severance when policies did not require upon condition of waiving FMLA claim supported finding of pretext in FMLA claim among other facts); Bartlett v. NIBCO Inc., 2011 U.S. Dist. LEXIS 28072 (N.D. Ind. 2011) ("Severance pay packages contingent upon a release of claims which are offered contemporaneously with the notice of termination are not covered by [Rule 408]", and the motive in offering same is admissible evidence); Karl v. City of Mountlake Terrace, 2011 U.S. Dist. LEXIS 59085 (W.D. Wash. 2011) (severance agreements are admissible in retaliation claims when made contemporaneous to termination, as they are not governed by FRE 408); Cassino v. Reichhold Chemicals, Inc., 817 F.2d 1338, 1342-43 (9th Cir. 1987) (emphasis added) (finding no abuse of discretion when district court admitted severance agreement into evidence, stating "[w]here, as here, the employer tries to condition severance pay upon the release of potential claims, the policy behind Rule 408 does not come into play.")

- 32. Plaintiff was treated disparately with respect to termination, contrary to individuals substantially younger than him.
- 33. Plaintiff was baselessly terminated on or about August 14, 2020, for pretextual reasons. While Defendants claimed that Plaintiff was terminated as a result of an alleged "restructuring," there was, in fact, no restructuring.
- 34. Following Plaintiff's termination, he was replaced by/his job duties have been performed by a much younger, less experienced individual, who does not possess Plaintiff's level of qualifications.
- 35. Plaintiff believes and therefore avers that he was terminated from his position with Defendants because of his advanced age.
  - 36. These actions as aforesaid constitute unlawful age discrimination under the ADEA.

    WHEREFORE, Plaintiff prays that this Court enter an Order providing that:
- A. Defendants are to promulgate and adhere to a policy prohibiting discrimination and retaliation in the future against any employee(s);
- B. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;
- C. Plaintiff is to be awarded liquidated damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious and outrageous conduct and to deter Defendants or other employers from engaging in such misconduct in the future;

- D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation under the PHRA); and
- E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.
  - F. Plaintiff is to be given a jury trial as demanded in the caption of this Complaint.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:

Ari R. Karpf, Esq.
3331 Street Rd.
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801
Attorneys for Plaintiff

Dated: May 10, 2021

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

# CASE MANAGEMENT TRACK DESIGNATION FORM

(215) 639-0801	(215) 639-4970	akarpf@karpf-law.com				
Date .	Attorney-at-law	Plaintiff Attorney for	***************************************			
5/10/2021						
(f) Standard Management - Cases that do not fall into any one of the other tracks.						
<ul><li>(e) Special Management – C commonly referred to as the court. (See reverse s management cases.)</li></ul>	Cases that do not fall into trace complex and that need specide of this form for a detail	cial or intense management by	( )			
(d) Asbestos – Cases involve exposure to asbestos.	ing claims for personal inju	ry or property damage from	( )			
(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2						
(b) Social Security - Cases 1 and Human Services den	requesting review of a deci- lying plaintiff Social Securi	sion of the Secretary of Health ity Benefits.	( )			
(a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255.						
SELECT ONE OF THE FO	OLLOWING CASE MAN	AGEMENT TRACKS:				
plaintiff shall complete a Ca filing the complaint and serve side of this form.) In the edesignation, that defendant s	se Management Track Desi e a copy on all defendants. ( event that a defendant does shall, with its first appearan rties, a Case Management T	y Reduction Plan of this court, counse ignation Form in all civil cases at the tire. See § 1:03 of the plan set forth on the resent agree with the plaintiff regarding ce, submit to the clerk of court and server and Designation Form specifying the igned.	ne o verso said ve or			
Brenner Aerostructures, LLC						
v.	:	NO.				
Francis Breen, Jr.		CIVIL ACTION				

(Civ. 660) 10/02

# Case 2:21-cv-02125-MAKED PACKET PRINTING THE PAGE 9 of 10 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

#### **DESIGNATION FORM**

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 1080 Richardson Avenue, Ben salem, PA 19020								
Address of Defendant: 450-3 Winks Lane, Bensalem, PA 19020 / 4425 W. May Street, Bldg A, Wichita, KS 67209								
Place of Accident, Incident or Transaction: Defendants place of business								
RELATED CASE, IF ANY:								
Case Number: Judge: Date Terminated:								
Civil cases are deemed related when Yes is answered to any of the following questions:								
1. Is this case related to property included in an earlier numbered suit pending or within one year Yes No X previously terminated action in this court?								
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit  Yes  No X								
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?								
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights  Yes  No X								
I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.								
DATE: 5/10/2021 ARK2484 / 91538								
Attorney I.D. # (if applicable)								
CIVIL: (Place a √ in one category only)								
CIVIL: (Place a √ in one category only)  A. Federal Question Cases:  B. Diversity Jurisdiction Cases:								
A. Federal Question Cases:  1. Indemnity Contract, Marine Contract, and All Other Contracts 2. FELA 3. Jones Act-Personal Injury 3. Assault, Defamation								
A. Federal Question Cases:  1. Indemnity Contract, Marine Contract, and All Other Contracts 2. FELA 3. Jones Act-Personal Injury 3. Assault, Defamation								
A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   1. Insurance Contract and Other Contracts   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   4. Marine Personal Injury   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   6. Other Personal Injury (Please specify):   7. Products Liability								
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A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   1. Insurance Contract and Other Contracts   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   4. Marine Personal Injury   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   6. Other Personal Injury (Please specify):   7. Civil Rights   7. Products Liability   8. Habeas Corpus   8. Products Liability   8. Products Liability   9. Securities Act(s) Cases   9. All other Diversity Cases   9. All other Diversity Cases   10. Social Security Review Cases   10. Social Sec								
A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   1. Insurance Contract and Other Contracts   2. Airplane Personal Injury   3. Assault, Defamation   4. Antitrust   4. Marine Personal Injury   5. Patent   5. Motor Vehicle Personal Injury   6. Labor-Management Relations   6. Other Personal Injury (Please specify):   7. Civil Rights   7. Products Liability   8. Habeas Corpus   8. Products Liability   Asbestos   9. Securities Act(s) Cases   9. All other Diversity Cases								
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A. Federal Question Cases:    1. Indemnity Contract, Marine Contract, and All Other Contracts   2. FELA   3. Jones Act-Personal Injury   3. Assault, Defamation   4. Antitrust   5. Patent   6. Labor-Management Relations   7. Civil Rights   8. Habeas Corpus   9. Securities Act(s) Cases   10. Social Security Review Cases   11. All other Federal Question Cases   Please specify):   ARBITRATION CERTIFICATION   (The effect of this certification is to remove the case from eligibility for arbitration.)   ARBITRATION CERTIFICATION     ARBITRATION CER								
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# Document 1. Filed 05/10/21 Page 10 of 10 IL COVER SHEET Case 2:21-cv-02125-MA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as

provided by local rules of court purpose of initiating the civil de	. This form, approved by the ocket sheet. (SEE INSTRUC	e Judicial Conference of TIONS ON NEXT PAGE OF	the Unite FTHIS FOR	ed States in September 19° (RM.)	/4, is required for the use of th	ne Clerk of Court for the	
I. (a) PLAINTIFFS				DEFENDANTS			
BREEN, JR., FRANCIS				BRENNER AEROSTRUCTURES, LLC D/B/A THE ATLAS GROUP, ET AL.			
(b) County of Residence of	of First Listed Plaintiff _	Bucks		County of Residence	of First Listed Defendant _	Bucks	
(EXCEPT IN U.S. PLAINTIFF CASES)				(IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.			
(c) Attorneys (Firm Name, A	Address, and Telephone Number	)		Attorneys (If Known)			
Karpf, Karpf & Cerutti, Suite 128, Bensalem, PA							
II. BASIS OF JURISDI	CTION (Place an "X" in O	ne Box Only)			RINCIPAL PARTIES	(Place an "X" in One Box for Plaintif	
1 U.S. Government X 3 Federal Question Plaintiff (U.S. Government Not a Party)		(For Diversity Cases Only) and One Box for Defendant)  PTF DEF  Citizen of This State 1 1 Incorporated or Principal Place 4 4 of Business In This State					
2 U.S. Government 4 Diversity Defendant (Indicate Citizenship of Parties in Item III)		Citize	Citizen of Another State 2 2 Incorporated and Principal Place 5 5 of Business In Another State				
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IV. NATURE OF SUIT		ly) PRTS	FO	PRFEITURE/PENALTY	Click here for: Nature of BANKRUPTCY	of Suit Code Descriptions. OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise  REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	PERSONAL INJURY  ' 310 Airplane ' 315 Airplane Product     Liability ' 320 Assault, Libel &     Slander ' 330 Federal Employers'     Liability ' 340 Marine ' 345 Marine Product     Liability ' 350 Motor Vehicle ' 355 Motor Vehicle     Product Liability ' 360 Other Personal     Injury ' 362 Personal Injury     Medical Malpractice  CIVIL RIGHTS  □ 440 Other Civil Rights □ 441 Voting X 442 Employment □ 443 Housing/     Accommodations □ 445 Amer. w/Disabilities -     Employment □ 446 Amer. w/Disabilities -     Other □ 448 Education	PERSONAL INJURY  365 Personal Injury - Product Liability  367 Health Care/ Pharmaceutical Personal Injury Product Liability  368 Asbestos Personal Injury Product Liability  PERSONAL PROPER  370 Other Fraud  371 Truth in Lending  380 Other Personal Property Damage Product Liability  PRISONER PETTION Habeas Corpus:  463 Alien Detainee  510 Motions to Vacate Sentence  530 General 535 Death Penalty Other:  540 Mandamus & Othe 550 Civil Rights  555 Prison Condition  560 Civil Detainee - Conditions of Confinement	TY	5 Drug Related Seizure of Property 21 USC 881 0 Other  LABOR 0 Fair Labor Standards Act 0 Labor/Management Relations 0 Railway Labor Act 1 Family and Medical Leave Act 0 Other Labor Litigation 1 Employee Retirement Income Security Act  IMMIGRATION 2 Naturalization Application 5 Other Immigration Actions	' 422 Appeal 28 USC 158 ' 423 Withdrawal 28 USC 157  PROPERTY RIGHTS  □ 820 Copyrights □ 835 Patent - Abbreviated New Drug Application □ 840 Trademark SOCIAL SECURITY ' 861 HIA (1395ff) □ 862 Black Lung (923) ' 863 DIWC/DIWW (405(g)) □ 864 SSID Title XVI ' 865 RSI (405(g))  FEDERAL TAX SUITS □ 870 Taxes (U.S. Plaintiff or Defendant) □ 871 IRS—Third Party 26 USC 7609	375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes	
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VII. REQUESTED IN	<del></del>	ADEA and the PHI IS A CLASS ACTION		EMAND \$	CHECK YES only	if demanded in complaint:	
COMPLAINT:	UNDER RULE 2			•	JURY DEMAND	*	
VIII. RELATED CASI IF ANY	E(S) (See instructions):	JUDGE			DOCKET NUMBER		
DATE 5/10/2021		SIGNATURE OF AT	ORNEY C	FRECORD			
5/10/2021 FOR OFFICE USE ONLY	e <sup>i</sup>						

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